

A. What is INSLAW, What is PROMIS?

INSLAW, Inc. manufactures and markets a family of application software products for case tracking and workflow management. INSLAW currently markets these products to three market sectors: (1) public justice agencies such as courts, prosecution agencies, municipal civil law departments, bail, probation, and parole agencies, and jails; (2) insurance companies, particularly with reference to the insurance company offices that adjudicate and litigate claims; and, (3) corporate legal departments.

INSLAW began operations in January 1981 as the successor for-profit company to the not-for-profit Institute for Law and Social Research.

During the decade of the 1970's, the Institute developed a computer software product, known as PROMIS, to help local district attorneys' offices manage their large caseloads, and plan and control their workflow.

The key to PROMIS and its derivative software products is harnessing the power of information technology to increase the leverage of individual knowledge workers in carrying out the critical missions of their organizations.

For a local district attorney's office, PROMIS enables prosecuting attorneys easily to identify the small proportion of persons arrested who account for a disproportionate volume of the criminal caseload. With assistance from PROMIS, prosecutors can invest additional resources in the incapacitation, through conviction and incarceration, of prolific offenders.

Empirical research has confirmed the value of such information technology to the task of improving crime control. Data from the PROMIS system in the local prosecutor's office here in Washington, D.C. revealed that 7% of the persons arrested accounted for 24% of the arrests for serious offenses during a five year period.⁸ Regression analyses of the PROMIS data also suggested an opportunity for doing a better job with the cases of such career criminals because there did not appear to be any correlation between a prosecutor's decision to invest resources in a case and the seriousness of the defendant's prior criminal record.⁹

The PROMIS system also provided management insights about ways to improve the local criminal justice system. Empirical analyses of PROMIS data, for example, revealed that about 15% of the police officers who make the arrests in the City of Washington during a given year account for about half of all of the arrests that ultimately stick in court; furthermore, their greater success is attributable to

the fact that they get to the crime scene faster and, thereby, find additional witnesses and physical evidence in a greater proportion of their cases than do the less successful arresting officers.¹⁰ As a final example, PROMIS data revealed that the leading cause for case attrition in the urban criminal courts is not the hamstringing of police officers and prosecutors through the exclusionary rule, but instead inadequate procedures for notifying witnesses when and where to come to Court.¹¹ The Exclusionary Rule appears to account for less than 1% of the attrition of serious cases in large urban courts.¹²

During the 1970s, the Institute developed and enhanced the PROMIS software; helped local district attorneys' offices across the country adopt and use PROMIS; and published a series of empirical research studies, based on the PROMIS data.

The Department of Justice (DOJ) financed most of the Institute's work during the 1970's through an estimated \$10 million in grants and contracts from its Law Enforcement Assistance Administration (LEAA).

By 1980, a bipartisan political consensus had emerged in Congress to restructure or liquidate LEAA, while assuring that PROMIS, the career criminal prosecution program and specified other LEAA successes were perpetuated.

Task Forces established by both the Carter Administration and the Reagan Administration published reports that indicated the agreement of the Executive Branch on the need to preserve PROMIS for the benefit of state and local prosecutors. Additionally, a federal government computer research agency known as FEDSIM (Federal Computer Performance Evaluation and Simulation Center) published a report in 1980 that promoted the adaptability of PROMIS to the case tracking and workflow management needs of federal agencies.¹³

Notwithstanding the strong bipartisan agreement that the public interest required the preservation of PROMIS, neither the Carter nor the Reagan Administrations actually made any provisions to preserve PROMIS.

The founders of the Institute decided in 1980 and 1981 that the only way to preserve PROMIS would be to invest private capital in the privatization and commercialization of the PROMIS software technology. This meant investing private money to continue (1) the PROMIS software upkeep and upgrade services previously financed by LEAA; (2) to develop derivative case tracking and workflow management software products for courts and jails and other public justice and private legal entities in order to create a market large enough to sustain a commercial enterprise; and (3) to

establish a nationwide marketing program for the planned commercial version of the software.

The founders of the Institute established INSLAW, Inc. as the successor for-profit company, and purchased the assets of the Institute from its independent trustees, effective January 1, 1981.

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- 8 The Scope and Prediction of Recidivism by Kristen M. Williams, Ph.D., of the Institute for Law and Social Research, prepared for the Law Enforcement Assistance Administration, National Institute of Law Enforcement and Criminal Justice, July 1979.
- 9 Highlights of Interim Findings, the Institute for Law and Social Research, prepared for the Law Enforcement Assistance Administration, National Institute of Law Enforcement and Criminal Justice, 1977.
- 10 What Happens After Arrest? by Brian Forst, Judith Lucianovic and Sarah J. Cox of the Institute for Law and Social Research, prepared for the Law Enforcement Assistance Administration, National Institute of Law Enforcement and Criminal Justice, August 1977.
- 11 Witness Cooperation With a Handbook of Witness Management by Frank J. Cannavale, Jr., and William D. Falcon (Editor) of the Institute for Law and Social Research (INSLAW), D.C. Heath and Company, Lexington, Massachusetts, 1976.
- 12 What Happens After Arrest? by Brian Forst, Judith Lucianovic and Sarah J. Cox of the Institute for Law and Social Research, prepared for the Law Enforcement Assistance Administration, National Institute of Law Enforcement and Criminal Justice, August 1977.
- 3 Report to Attorney General Bell: Restructuring the Justice Department's Program of Assistance to State and Local Governments for Crime Control and Criminal Justice Systems Improvement, U.S. Department of Justice, June 23, 1977; pp 10, 29.
and
Final Report to Attorney General William F. Smith, The Attorney General's Task Force on Violent Crime, U.S. Department of Justice, August 17, 1981, p. 145.
and
Analysis of OSHRC Case Tracking System Alternatives, Federal Computer Performance, Evaluation and Simulation Center (FEDSIM), March 1980, pp iii, 45 and 46.

- B. INSLAW Adopted Preventive Law Strategies at the Outset to Assure Clear Title to the Proprietary Version of the PROMIS Software And To Minimize Related Future Problems.

In 1980, faced with the prospect of the liquidation of LEAA and the loss of its traditional source of financing for PROMIS, the founders of INSLAW, Inc. retained Roderick Hills, then of Latham, Watkins and Hills, to help them organize INSLAW, Inc.; purchase the assets of the Institute for Law and Social Research; and obtain clear title to the future proprietary version of PROMIS.

1. The Election of Outside Directors to The Board of INSLAW's Predecessor, Not-For-Profit Institute For Law and Social Research.

On the advice of Mr. Hills, the Board of Directors of the Institute for Law and Social Research elected three distinguished lawyers as outside directors, Elliot Richardson, Harry McPherson and Calvin Collier, and asked the outside directors to make an independent determination of whether the management of the Institute was correct in its assertion that the Institute had come to the end of its useful life with the impending liquidation of LEAA, and, if they so found, to negotiate the terms and conditions for the sale of the Institute's assets.

The outside trustees, in turn, retained Francis Musselman, a partner of Elliot Richardson at Milbank, Tweed, Hadley and McCloy, to represent them. Mr. Musselman is a corporate lawyer who is one of the pioneers in the application of computer systems to law firms. After determining that the Institute had, in fact, come to the end of its useful life, the outside trustees also employed as a consultant, Dr. Minor Sachlis, a Professor of Finance at George Washington University, to develop the methodology for valuing the assets of the Institute. Because the PROMIS software was deemed to be in the public domain, Professor Sachlis did not have to develop a method of valuing the PROMIS software in connection with the planned sale by the Institute of its assets.

2. The Disclosure to DOJ of the Plans to Commercialize PROMIS by Investing Private Money in The Enhancement of The Public Domain Version of PROMIS.

Mr. Hills and I discussed our plans with officials of DOJ, including Deputy Attorney General Charles Renfrew and Charles Ruff, U.S. Attorney for the District of Columbia. We wanted to find out whether DOJ had any alternative plans

for perpetuating the PROMIS software, following the liquidation of LEAA, and whether DOJ had any views about the disposition of the assets of the Institute, such as computers and so forth, that had been created during the 1970's in connection with the Institute's work for LEAA and for the local prosecution division of the U.S. Attorney's Office for the District of Columbia. As expected, DOJ had no alternative plans for perpetuating PROMIS and no views about the proper disposition of the assets of the Institute, other than that the disposition should be in accordance with the applicable laws.

Mr. Hills and his associates checked with the D.C. Government office that oversees not-for-profit corporations, and with the office of the Internal Revenue Service that oversees 501(c)3 charities for possible guidance on the disposition of the proceeds of the sale of the assets.

On advice of Mr. Hills, I wrote to a cross section of our customers, then mostly local district attorneys in major cities of the United States, to disclose to them both the impending liquidation of LEAA and our plans to invest private, non-federal money in the privatization and commercialization of the public domain PROMIS software.

3. The Development of Employee Non-Disclosure Agreements and of Fixed-Price Software Maintenance Contracts That Conveyed to INSLAW, Inc. the Proprietary Rights to Changes in the Public Domain Version of the PROMIS Code.

With assistance from counsel, we created non-disclosure agreements for all employees of the successor, INSLAW, Inc., and standard fixed-price annual software upkeep and upgrade contracts which conveyed to INSLAW the proprietary rights for all improvements to the PROMIS code created under the contracts.

4. Stringent Procedures For Tracking and Documentation of all Changes to the PROMIS Source Code.

Even during the years of the not-for-profit Institute, we had always had very good procedures for tracking and documenting the dates and purposes of every change to the code, and the identity of the software engineer making the change. These procedures later proved invaluable in the trial to prove the existence and value of the privately-financed enhancements to PROMIS.

5. INSLAW, Inc.'s Purchase of the Assets of the Not-For-Profit Institute for Law and Social Research.

With all of these precautions having been taken, INSLAW, Inc. purchased substantially all of the assets of the Institute for Law and Social Research effective January 1, 1981. The outside directors of the Institute, who by then were the only directors of the Institute, agreed to accept a note from INSLAW, Inc. for the purchase of the assets.

6. The Institute's Plans for the use of the Proceeds of the Sale of its Assets to INSLAW, Inc.

The Institute's directors also developed a plan to use the proceeds of the note to finance research by third parties that would benefit the major city local district attorneys who had been the primary beneficiaries of the Institute's work during the 1970's.

7. INSLAW's Delivery to LEAA Of Full Source Code and Documentation for the Public Domain Version of PROMIS.

In May 1981, the traditional LEAA funding for INSLAW's support of local district attorney office users of PROMIS ended. INSLAW, thereupon, turned over to LEAA copies of all of the source code and documentation for the public domain version of PROMIS, and began entering into fixed-price contracts with PROMIS users for annual software upkeep and upgrade services. One of the PROMIS users who entered into such a contract with INSLAW in 1981 was the DOJ, through its Land and Natural Resources Division.

8. Attempting to Dissuade DOJ From its Plan To Install Primitive Case Management Software on Word Processing Machines in the 70 Smaller U.S. Attorneys' Offices.

Also in May 1981, I took another preventive law measure, designed to minimize problems in the future. I sought and obtained a meeting with William Tyson, the Director of DOJ's Executive Office for U.S. Attorneys, in an attempt to dissuade him from plans to issue a Request for Proposals to install primitive case management software on word processing machines in the 70 smaller U.S. Attorneys' Offices. The Institute had earlier developed such software on government-furnished Lanier word processing machines in two U.S. Attorneys' Offices, at the request of DOJ. I told Mr. Tyson that word processing machines were ill-suited for case management work, and that the attempt to expand the pilot use of this technology to 70 smaller U.S. Attorneys' Offices could defeat the labor saving objectives of

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automation. I urged Mr. Tyson to substitute full function micro computers for the word processing machines.

Mr. Tyson and his deputy, Larry McWhorter, declined to abandon the planned use of word processing machines for case management for the stated reason that detractors of the U.S. Attorney's Office automation project within DOJ would use the opportunity to renew their efforts to sabotage the automation project altogether. Mr. Tyson did, however, volunteer to take full responsibility, if my warning proved to be correct and the word processing machines were only useful for word processing work. Mr. Tyson further stated that under such circumstances, he would view the overall automation project as a success because he would have obtained the PROMIS software on full function computers in the 20 largest U.S. Attorneys' Offices which account for a disproportionate volume of the national caseload.

9. Enlisting the Help of the White House Office of Management and Budget (OMB) in Trying to Persuade DOJ to Substitute Full Function Computers For Word Processing Machines To Support Case Management Systems in The 70 Smaller U.S. Attorneys' Offices.

I also sought and obtained a meeting in May 1981 with Harold Steinberg, then Associate Director for Management of the White House Office of Management and Budget (OMB). OMB and the Congress were the primary sources of pressure on DOJ to automate the U.S. Attorneys' Offices. I sought Mr. Steinberg's assistance in persuading DOJ to substitute full function computers for word processing machines in that phase of the planned procurement that related to the 70 smaller U.S. Attorneys' Offices. OMB sent a letter to DOJ in September 1981 enclosing and endorsing as accurate an analysis by INSLAW of the reasons to substitute computers for word processing machines.¹⁴ OMB also offered, but DOJ refused to accept, additional millions of dollars to enable DOJ to make the substitution.

10. In November 1981, in Response to DOJ's Request for Proposals to Install the Public Domain Version of PROMIS in the 20 Largest U.S. Attorneys' Offices, INSLAW Disclosed the Existence of Separately-Licensable Proprietary Enhancements to PROMIS.

In November 1981, INSLAW responded to the DOJ Request for Proposals to install the public domain version of PROMIS on government-furnished mini computers in the 20 largest U.S. Attorneys' Offices, and to install primitive case management software on government furnished word processing machines in the 70 smaller U.S. Attorneys' Offices.

In both our proposal and subsequent written responses to the DOJ Contracting Officer about our proposal, we disclosed that we had developed and were continuing to develop privately-financed proprietary enhancements to the public domain version of PROMIS, and that DOJ could use these enhancements only if it obtained a license from INSLAW to use them.¹⁵

11. INSLAW Entered Into a Three-Year Cost-Plus Contract With DOJ on March 6, 1982.

On March 16, 1982, INSLAW entered into a three-year cost-plus contract with DOJ to (1) install the public domain version of PROMIS on government-furnished mini computers in the 20 largest U.S. Attorneys' Offices; (2) use one of INSLAW's computers to provide PROMIS on an interim time sharing service basis to the 10 largest U.S. Attorneys' Offices until DOJ procured the mini computers for those offices; and (3) install primitive case management software on government-furnished word processing machines in the 70 smaller U.S. Attorneys' Offices.

12. On August 11, 1982, DOJ Gave Its Sign Off on INSLAW's Plans to Market Licenses to the Proprietary Version of PROMIS.

On April 2, 1982, about two weeks after the three-year PROMIS contract began, Mr. Hills conveyed to Stan Morris, then Associate Deputy Attorney General, a memorandum that I had prepared on the history and extent of DOJ and LEAA financing for the public domain version of PROMIS; on the loss of public financing for PROMIS software upkeep and upgrade services, R & D work, and marketing work, by virtue of the liquidation of LEAA; on the standard practice in the computer software industry of financing such activities through license fees and annual maintenance contracts; and on what INSLAW had done in the 11 months since the expiration of the LEAA financial subsidy to perpetuate and enhance PROMIS.¹⁶

Mr. Hills asked Mr. Morris for a DOJ sign off that (1) the version of PROMIS delivered by INSLAW to DOJ in May 1981 was indeed in the public domain; and that (2) DOJ did not dispute INSLAW's right to market as a proprietary product, software that was the sum of the public domain version and the continually increasing stream of privately-financed enhancements.

After four and one-half months of meetings, discussions and correspondence between counsel and various DOJ officials, including the senior intellectual property lawyers of DOJ's Civil Division, Mr. Morris sent a letter on August 11, 1982 conveying the DOJ "sign off" that INSLAW had sought.¹⁷

C. DOJ's Theft of INSLAW's Proprietary Version of PROMIS in 1983.

1. The Early 1983 Effort by DOJ Officials to Bluff INSLAW Into Turning Over a Copy of the Proprietary Version of PROMIS Without Any contractual Acknowledgement of INSLAW's Title.

In early 1983, Peter Videnieks, the DOJ Contracting Officer, and C. Madison Brewer, DOJ's PROMIS Project Manager, demanded that INSLAW turn over to DOJ a copy of the PROMIS software that INSLAW was then operating on an INSLAW computer to provide interim time sharing services to the 10 largest U.S. Attorneys' Offices.

The stated reason for the demand was that Mr. Videnieks was considering rescinding a contractual provision for accelerated payment of INSLAW's invoices for services rendered under the contract. Messrs. Videnieks and Brewer expressed the concern that this threatened action by DOJ might propel INSLAW into bankruptcy, and that DOJ might not then be able to obtain the software.¹⁸

Mr. Videnieks' threat resulted from a technical violation by INSLAW of a covenant against obtaining additional commercial credit without first obtaining the concurrence of the Contracting Officer. This was one of several covenants that related to the contractual provision for accelerated payment of invoices for services already rendered to and accepted by the government.¹⁹

The DOJ auditor who had discovered the technical infraction in the fall of 1982 had expressed to INSLAW his full satisfaction with INSLAW's explanation for the inadvertent nature of the infraction. The DOJ auditor told INSLAW that he would not even bother to raise the issue for the record until his next routine audit.

Messrs. Videnieks and Brewer intercepted this plan, however, when they learned of the technical infraction in the course of their debriefing of the DOJ auditor.²⁰

Between February 4, 1983 and April 11, 1983, INSLAW and DOJ were locked in a struggle over whether DOJ could force INSLAW to deliver the proprietary, time sharing version of PROMIS without any safeguard for INSLAW's property rights.

Mr. Brewer dismissed as irrelevant the DOJ sign off letter of August 11, 1982, and insisted that DOJ had unrestricted rights to all of the software being used in the INSLAW time sharing service to DOJ, including the privately-financed enhancements.²¹

I offered at a meeting at DOJ on February 4, 1983 to make the enhancements available at no cost to the 20 largest U.S. Attorneys' Offices covered by the contract, if DOJ would amend the contract to acknowledge INSLAW's proprietary rights. DOJ's internal procurement counsel, William Snider, responded to me that INSLAW did not have to give up its right to be paid in order to secure its proprietary rights; that that was not the way the Government does business; and that if DOJ wished to use INSLAW's proprietary enhancements, DOJ would pay for them.

On April 11, 1983, Mr. Videnieks executed Modification #12 to the Contract, at the insistence of Mr. Snider. Documents obtained under discovery revealed that Mr. Brewer had "forbade" Mr. Videnieks, the ostensibly independent Contracting Officer, to enter into Modification #12, and had offered to "protect" the Contracting Officer from having to accede to the pressure from Mr. Snider to execute the Modification. Mr. Videnieks' notes revealed that he and Mr. Brewer were in agreement on not wanting the Modification because they thought they could "get the goods" without "signature".²²

Pursuant to Modification #12, INSLAW delivered the proprietary version of PROMIS and DOJ promised to (1) protect INSLAW's proprietary rights; (2) make a timely decision whether DOJ wished to keep any of the proprietary enhancements; and (3) negotiate the payment of license fees for any enhancements DOJ decided to keep.

2. On April 20, 1983, About One Week After DOJ Modified The Contract to Acknowledge INSLAW's Proprietary Rights to PROMIS, The Chairman of Hadron, Inc., Who Professed to Have Close Ties at the Highest Level of the Reagan Administration, Telephoned INSLAW to Buy INSLAW For the Stated Purpose of Obtaining Title to PROMIS and, Thereby, Acquiring the Federal Government's Case Management Software Business. Biotech Capital Corporation, Currently Known as Infotechnology, Inc., Controls Hadron, Inc. Dr. Earl Brian, Secretary of Health and Welfare in Governor Reagan's California Cabinet, Heads Biotech Capitol Corporation/ Infotechnology, Inc.

On April 20, 1983, about one week after DOJ executed Modification #12, Dominick Laiti, Chairman of Hadron, Inc., a Washington, D.C. area federal information systems contractor, telephoned me in an attempt to purchase INSLAW. Mr. Laiti told me that Hadron had political contacts at the highest level of the Reagan Administration and could obtain the federal government's case management software business as a result of those contacts, but first needed to acquire title to PROMIS. When I told Mr. Laiti that I had no

interest in selling INSLAW or PROMIS, he responded: "We have ways of making you sell."

Although I did not then know it, Biotech Capital Corporation, currently known as Infotechnology, Inc., controls 4 of the 6 seats of Hadron's Board of Directors. Dr. Earl Brian, a former member of Governor Reagan's California Cabinet, is the founder and Chief Executive Officer of Biotech Capital Corporation.

3. Beginning in May 1983, Shortly After INSLAW Refused the Acquisition Overture, DOJ Officials Launched a Series of Transparently Fraudulent Contract Disputes With the Objective of Starving INSLAW of Cash and Driving the Company Into Bankruptcy.

One month after Mr. Laiti's threat to me about making me sell INSLAW, DOJ officials launched the first of a series of sham contract disputes designed to starve INSLAW of cash and drive the Company into bankruptcy. INSLAW's PROMIS Contract with DOJ then accounted for about 75% of the Company's total revenues.

- a. The Repudiation of the Negotiated Formula For Billing INSLAW's Time Sharing Service In May 1983.

In May 1983, Mr. Videnieks decided to repudiate the negotiated formula for INSLAW's billing of its time sharing services under the contract. By July 1983, when he formally apprised INSLAW of his decision by letter, Mr. Videnieks acknowledged that he had already withheld about \$250,000 that was owed INSLAW according to the billing formula.

Mr. Videnieks' stated reason for repudiating the billing formula was that it resulted in excessively high charges to DOJ. From DOJ documents obtained under discovery, however, we learned that INSLAW's billings under the formula for the peak year of DOJ use of INSLAW's time sharing services were less than the amount that DOJ, prior to issuance of the Request for Proposals, had estimated such time sharing services should cost on an annual basis.²³

Other DOJ documents obtained under discovery revealed that DOJ overruled the Director of its Audit Staff when he raised questions about the propriety of auditing INSLAW's time sharing costs when the billings were pursuant to a negotiated billing formula;²⁴ and about the propriety of including on the DOJ audit team for the INSLAW time sharing cost audit a representative of DOJ's Executive Office for U.S. Attorneys.²⁵

- b. In July 1983, The DOJ Contracting Officer Stopped Paying INSLAW's Monthly Invoices for Profit Earned Under the Contract on the Stated Basis That INSLAW was Significantly Behind Schedule on That Part of The Contract Relating to The Installation of Primitive Case Management Software on Government-Furnished Word Processing Machines.

DOJ had estimated that it would provide the government-furnished word processing equipment by the fourth month of INSLAW's contract. Delays in DOJ's separate procurement of the word processing equipment, however, meant that DOJ could not furnish the equipment until the 11th month of the contract, i.e., until February 1983. Moreover, the model Lanier word processor that DOJ selected had new operating system software that was still in Beta test, and not completely documented.

DOJ had not even negotiated a new schedule for the word processing part of the contract to reflect these DOJ delays, when Mr. Videnieks' decided that INSLAW was behind schedule on this part of the contract, and that INSLAW should be punished by withholding its profit under the contract. On February 8, 1984, Mr. William Snider, DOJ's procurement counsel, called Mr. Videnieks' attention to these facts in a subsequent internal DOJ legal opinion on the word processing problems under the contract, an opinion that is described in greater detail later in this paper.

Mr. Videnieks did not disclose his July 1983 decision to stop paying INSLAW's profit under the contract until September 1983, soon after INSLAW delivered to DOJ the version of its proprietary software for operation on government-furnished mini computers in the 20 largest U.S. Attorneys' Offices.²⁶

- c. DOJ "Misplaced" Its Audit Report on INSLAW's Overhead Costs and Then Stonewalled INSLAW for the Remainder of the Three-Year Contract Regarding The Negotiation of Current Billing Rates for Overhead Costs.

The third dispute also began in July 1983 but, as was the case with the second dispute, DOJ did not disclose its actions on the third dispute until the fall of 1983, following the late August 1983 delivery of the version of the proprietary software for operation on the government-furnished mini computers.

In July 1983, the DOJ Audit Staff published, internally within DOJ, a routine audit report on INSLAW's overhead costs.

The default termination of the contract would have provided the final push to drive INSLAW into bankruptcy. Because the contract then accounted for most of the Company's business, its abrupt termination would have made it impossible for INSLAW to reorganize. This, in turn, would have forced INSLAW to sell title to the PROMIS software at a liquidation auction.

Two months earlier, in October 1983, one of INSLAW's institutional investors, a Small Business Investment Corporation known as 53rd Street Ventures, had tried to convince me to accept an extra million dollars in equity capital from its then parent company, Alan Patricoff and Associates. 53rd Street Ventures told me at the October 1983 meeting in New York City that they had met in September 1983 with "a businessman with ties at the highest level of the Reagan Administration" who wanted to buy INSLAW to get the PROMIS software for federal government contracts. 53rd Street Ventures encouraged me to accept the extra equity capital, even though it would have caused my loss of majority control of the Company, and to use the capital to expand aggressively INSLAW's sales and marketing operations, even if, as 53rd Street Ventures suggested to me, it meant running a monthly deficit. I declined to accept the offer.

14 INSLAW, Inc. v. United States of America and the United States Department of Justice, Case No. 85-0070, Adversary Proceeding No. 86-0069, Findings of Fact and Conclusions of Law, Finding of Fact #121, Page 60, by U.S. Bankruptcy Court Judge George F. Bason, Jr.

15 Ibid, Finding of Fact Number 138, 139, and 140, pp. 69-71.

16 Ibid, Finding of Fact Number 162, Page 82-83.

17 Ibid, Finding of Fact Number 175, Page 88; and Finding of Fact Number 189, Page 93.

18 Ibid, Findings of Fact Nos. 227, 228, 229 and 230, pp. 108 - 111.

19 Department of Justice Discovery Document, Bates #19461-2.

20 Ibid.

21 INSLAW, Inc. v. United States of America and the United States Department of Justice, Case No. 85-0070, Adversary Proceeding No. 86-0069, Findings of Fact and Conclusions of Law, Findings of Fact No. 193, pp 94-95, by U.S. Bankruptcy Court Judge George F. Bason, Jr.

D. In January 1984, Edwin Meese Was Nominated as Attorney General of the United States; Two Confirmation-Related Investigations Began Soon After His Nomination and Apparently Delayed the DOJ Effort to Bankrupt and Liquidate INSLAW.

1. The General Accounting Office Investigation of DOJ, Prompted By an Allegation By a DOJ "Whistleblower" that Attorney General-Designate Meese and Associate Attorney General Jensen were Planning to Award a "Massive Sweetheart Contract" to Unidentified "Friends" for the Installation of PROMIS in Every Litigation Office of DOJ.

On February 3, 1984, about 10 days after President Reagan nominated Mr. Meese as Attorney General, Senator Max Baucus of Montana, then a member of the Senate Judiciary Committee, requested an urgent investigation by the General Accounting Office of INSLAW's PROMIS Contract with DOJ. GAO immediately redeployed a team of investigators from a broader investigation of DOJ procurement practices, then underway at Senator Baucus' request, to a highly focused and urgent investigation of the INSLAW contract.

I learned at the time, and have since confirmed from others, that the GAO investigation had been prompted by a DOJ whistleblower's warning to Senator Baucus' staff that as soon as Mr. Meese was confirmed as Attorney General, he and Mr. Jensen planned to install the PROMIS software in every litigation office of DOJ and to award, for that purpose, a "massive sweetheart contract" to unidentified friends.

GAO apparently assumed that INSLAW was the intended beneficiary of the alleged sweetheart deal and, therefore, conducted an emergency investigation of the INSLAW contract.

GAO investigators immediately demanded that DOJ turn over the official DOJ file on the INSLAW contract. DOJ neglected to include in the official file, when DOJ officials turned it over to GAO, any papers relating to the then pending plan to terminate INSLAW's entire contract for default.

I asked our government contracts counsel to contact GAO and apprise GAO of this omission by DOJ of what was clearly a material fact about the INSLAW contract.

On February 8, 1984, five days after Senator Baucus asked for the urgent GAO investigation, Mr. William Snider, DOJ's Procurement Counsel, rendered a written legal opinion to Mr. Videnieks on the subject of the pending default action. Mr. Snider noted the absence of a legally valid schedule in the contract for the word processing part of the contract, and opined that DOJ would not be able to sustain an effort to hold INSLAW in default.²⁹

On approximately February 13, 1984, about five days after Mr. Snider issued his internal DOJ legal opinion, Mr. Brewer, DOJ's PROMIS Project Manager, telephoned me to say that he had just returned from a meeting in Mr. Jensen's office, and that Mr. Jensen had decided to terminate the word processing part of INSLAW's contract and to terminate it for the convenience of the government, rather than for default. Mr. Brewer assured me, however, that DOJ had concluded that it would be entirely justified to seek a default termination. Mr. Brewer, of course, did not divulge to me the existence of the internal DOJ legal opinion that contradicted his assertions.

Sometime in February 1984, Mr. Jensen asked a mutual friend, Donald Santarelli, to give me a message and to make sure that I knew it was coming from Mr. Jensen.

Mr. Jensen wanted me to know that he did not blame INSLAW for the problems with the word processing part of the contract because he knew that it had been the government's mistake to insist on using word processing machines for case management systems. Mr. Jensen did not disclose to Mr. Santarelli that Mr. Jensen had in fact been the DOJ official who had, on December 29, 1983, approved in advance the plan to terminate INSLAW's contract for default because of the problems with the word processing part of the contract.³⁰

Mr. Jensen also wanted Mr. Santarelli to tell me that Mr. Jensen considered the PROMIS part of the contract to be a significant success, and that he would look with favor on finding the money to expand the number of U.S. Attorneys' offices scheduled to receive the PROMIS system if INSLAW submitted such a proposal.

We did, in fact, submit such a proposal before the end of February 1984. Mr. Brewer and Mr. Videnieks rejected the proposal in early April 1984.

According to documents obtained under discovery, Mr. Jensen asked OMB in April 1984 for an extra \$2 million to pay for the Government's continuation of the plan to use word processing machines for case management systems, the same plan that Mr. Jensen described to Mr. Santarelli in February 1984 as a mistake on the part of DOJ.³¹

GAO published its report in September 1984, without mentioning the allegations from the DOJ whistleblower that had prompted the PROMIS aspect of the GAO investigation. GAO apparently decided that the enmity between DOJ officials and INSLAW was so palpable that there was no need to worry about a "massive sweetheart contract" to INSLAW to install PROMIS in every litigation office of DOJ.³²

Neither GAO nor I was Machiavellian enough to imagine that DOJ officials intended to have their friends acquire title to PROMIS from INSLAW, before awarding a "massive sweetheart contract."

2. The 1984 Investigation of Attorney General-Designate Meese by Independent Counsel Jacob Stein, Particularly with Reference to Mr. Meese's Undisclosed Business Relationship with Dr. Earl Brian and Biotech Capital Corporation.

On March 27, 1984, the Senate Judiciary Committee asked Attorney General William French Smith to seek the appointment of an Independent Counsel to investigate certain allegations that had arisen in connection with the hearings on the confirmation of Mr. Meese as Attorney General. On April 2, 1984, the U.S. Court of Appeals appointed Jacob Stein as Independent Counsel to investigate these allegations about Mr. Meese.

Among the most serious allegations that Independent Counsel Jacob Stein was asked to investigate were that Mr. Meese, while Counsellor to the President, may have attempted to influence the Government to help his friends, or businesses in which he had a financial interest; and that this might explain Mr. Meese's failure to report, on his annual White House financial disclosure forms, certain information about his financial ties with Dr. Earl Brian and Biotech Capital Corporation. Mr. Meese had apparently failed to report the Meese family equity investment in Biotech Capital Corporation for two years in a row, and, for three years in a row, the receipt by Mrs. Meese of a \$15,000 loan to buy the stock.

According to the chapter on the Jacob Stein investigation in James Stewart's book, The Prosecutors, Independent Counsel Stein looked in vain for evidence that Mr. Meese had attempted to confer some substantial benefit on Dr. Brian or Biotech Capital Corporation.³³

As was the case with the GAO investigation, Independent Counsel Jacob Stein also published his report in September 1984. Mr. Stein reported that he had not found evidence of serious wrongdoing by Mr. Meese.

²⁹ INSLAW, Inc. v. United States of America and the United States Department of Justice, Case No. 85-0070, Adversary Proceeding No. 86-0069, Findings of Fact and Conclusions of Law, Finding of Fact #277, Page 127 and Findings of Fact #319, Page 141, by U.S. Bankruptcy Court Judge George F. Bason, Jr.

30 Ibid., Finding of Fact #280, Page 128.

31 Department of Justice Discovery Document, Bates #022528

32 Report to the Honorable Max Baucus, United States Senate,
"Justice Can Improve its Contract Review Committee's
Contribution to Better Contracting," by the U.S. General
Accounting Office, September 18, 1984.

33 The Prosecutors by James Stewart, published by Simon &
Schuster, September 1987.

- E. INSLAW Finally Succumbed to DOJ's Financial Pressures by Filing for Bankruptcy Protection on February 7, 1985; DOJ Officials Immediately Moved Covertly to Force INSLAW's Liquidation so That Others Could Buy Title to the PROMIS Software.

By February 1985, DOJ had withheld about \$1.8 million owed INSLAW for services rendered under the three year, 1982-1985 PROMIS contract, and had reneged on its contractual promise to negotiate PROMIS license fees. On February 7, 1985, INSLAW filed for protection under Chapter 11 of the U.S. Bankruptcy Code. Immediately thereafter, DOJ officials sought covertly to force INSLAW's liquidation so others could buy title to PROMIS software at a liquidation auction.

The U.S. Bankruptcy Court ruled in 1987 that Mr. Thomas Stanton, a political appointee of the Attorney General in charge of the Executive Office for U.S. Trustees, had attempted to corrupt the U.S. Trustees program in 1985 by applying pressure on U.S. Trustees to liquidate INSLAW "without justification and by unlawful means."³⁴

1. DOJ Sought to Detail a Senior DOJ Bankruptcy Lawyer From New York to Washington to Work on the INSLAW Case.

Mr. Stanton sought to have Mr. Harry Jones, then First Assistant U.S. Trustee for the Southern District of New York, detailed to Washington, D.C. to take over the INSLAW bankruptcy case.

2. Two DOJ Bankruptcy Trustees Secretly Collaborated to Prevent the Senior DOJ Bankruptcy Lawyer From Obtaining INSLAW's Confidential Financial Data.

Cornelius Blackshear, then the U.S. Trustee for the Southern District of New York and Mr. Jones' immediate superior, and William White, then U.S. Trustee for the Washington, D.C. area, were sufficiently concerned about Mr. Stanton's planned use of Mr. Jones in the INSLAW case that they secretly collaborated on drafting language which Mr. White persuaded Judge Bason to add to a then pending Confidentiality Order in the INSLAW case. The additional language forbade the U.S. Trustee's Office to divulge any confidential data about INSLAW to DOJ itself.

3. The Deputy Director of DOJ's National Bankruptcy Program Served as a "Whistleblower" on the DOJ Conspiracy to Use the Senior DOJ Lawyer to Force INSLAW's Liquidation.

On St. Patrick's Day, March 17, 1987, Anthony Pasquito, then Mr. Stanton's deputy, met me and my wife for breakfast at the Mayflower Hotel, at the urging of a mutual friend. Mr. Pasquito told us about Mr. Stanton's pressure to have Mr. Jones sent to Washington on the INSLAW case to prepare and argue a motion in U.S. Bankruptcy Court to liquidate INSLAW.

Mr. Pasquito assured us that Cornelius Blackshear, who had in the meantime become a United States Bankruptcy Court Judge for the Southern District of New York, would tell us about the conspiracy if we took his deposition.

Our bankruptcy counsel, Charles and Marcia Docter, felt uncomfortable about calling a federal judge in New York to ask him whether he knew about DOJ plans to send the equivalent of a government hit man to Washington for the purpose of extinguishing the life of a small computer software company. The Docters, therefore, prevailed on a friend, who knew Judge Blackshear from having previously practiced bankruptcy law in New York City and who had also in the meantime become a judge, to contact Judge Blackshear to see if he had even heard of INSLAW.

4. A Federal Bankruptcy Judge in New York Gave Sworn Testimony About the Plan to Use the Senior DOJ Bankruptcy Lawyer to Force INSLAW's Liquidation.

Judge Blackshear immediately confirmed to the Docters' intermediary that he knew a lot about INSLAW, and recounted efforts by Mr. Stanton to have Mr. Jones detailed to Washington in 1985 to bring about INSLAW's liquidation, efforts which Judge Blackshear characterized as "improper."

5. The Same Federal Bankruptcy Judge in New York Described the Planned DOJ Scheme to Another Judge as a "Conspiracy to Get the INSLAW Software."

Judge Blackshear also volunteered to the Docters' intermediary, the following: "I heard it was a conspiracy to get the INSLAW software."

6. Judge Bason Issued a Confidentiality Order in the INSLAW Case that Blocked the Planned DOJ Liquidation.

The Confidentiality Order issued by Judge Bason during the summer of 1985, containing the amendments drafted by Messrs. Blackshear and White, apparently prevented

Mr. Stanton from having Mr. Jones accomplish the intended mission. DOJ was the only entity to object to the Confidentiality Order. The U.S. District Court refused to hear a DOJ appeal of Judge Bason's Order.

³⁴ INSLAW, Inc. v. United States of America and the United States Department of Justice, Case No. 85-0070, Adversary Proceeding No. 86-0069, Findings of Fact and Conclusions of Law, Finding of Fact #351n, Page 157, by U.S. Bankruptcy Court Judge George F. Bason, Jr.

F. Following the Failure of DOJ's Covert 1985 Effort to Liquidate INSLAW, DOJ Encouraged a Hostile Takeover Bid for INSLAW by a Company That Did Not Intend to Press INSLAW's Litigation to Establish The Company's Entitlement to License Fees From DOJ.

Systems and Computer Technology, Inc. (SCT) is a computer services company based in Malvern, Pennsylvania. SCT specializes in multi-year contracts with government agencies and universities for the management of their computer facilities.

SCT secretly approached INSLAW's Unsecured Creditors Committee in May and June 1986 with an offer of several million dollars in cash for INSLAW. Counsel for the Unsecured Creditors Committee filed a pleading in June 1986 seeking to block INSLAW's request for an extension in its exclusive time for the stated reason of enabling the Unsecured Creditors Committee to negotiate the possible sale of INSLAW to SCT.

Documents obtained from SCT under third party discovery in INSLAW's litigation against DOJ revealed that SCT officials had met with unidentified officials of DOJ about INSLAW during the fall of 1985. This is the period immediately following the failure of DOJ's covert plan to force INSLAW's liquidation. The SCT documents noted that I had a poor relationship with the "Meese Justice Department."

During the same period that SCT officials were meeting with DOJ officials about INSLAW, DOJ gave its written response to INSLAW on a global settlement of the various disputes. Janis Sposato, General Counsel of DOJ's Justice Management Division, demanded in a letter dated November 15, 1985 that INSLAW pay DOJ \$580,000 for alleged overpayments to INSLAW under the disputes that I earlier described as sham disputes. Ms. Sposato also demanded that INSLAW acknowledge the right of the United States Government to employ independent contractors to install the PROMIS software anywhere it wished.

The SCT documents also reveal the understanding of SCT officials that DOJ was prepared to negotiate on the dollar amounts of the contract disputes, and that the contract disputes could have been resolved very early. The unstated, but clear implication in the SCT documents is that "the fly in the ointment," to borrow a phrase from a subsequent letter on the subject from Deputy Attorney General Burns, preventing an early and favorable resolution of the contract disputes, was my insistence that DOJ pay INSLAW for its use of INSLAW's proprietary enhancements.

Prior to SCT's secret overture to the Unsecured Creditors Committee, SCT's President Michael Emmi had attempted to persuade me to sell INSLAW to SCT. Mr. Emmi repeatedly advised me that SCT had no interest in pursuing the litigation against DOJ.

It is, of course, puzzling why SCT would agree to offer several million dollars in cash for INSLAW without any intention of prosecuting INSLAW's claim of title to the proprietary case management software, the Company's most significant asset.

INSLAW was able to persuade a majority of the members of the Unsecured Creditors Committee by August 1986 to support its request for a six month extension in the period of exclusivity under Chapter 11. Judge Bason granted the request in late August, and this effectively ended the SCT hostile takeover bid.

- G. With the Failure of the Hostile Takeover Bid, DOJ Officials Tried to Entice INSLAW's Litigation Counsel to Persuade INSLAW to Relinquish Its Claim to License Fees, With The Clear Implication That DOJ Would Then, In Exchange, Make a Favorable Settlement of the Contract Disputes.

On August 28, 1986, at almost the precise time of the final failure of the SCT hostile takeover bid, Deputy Attorney General Arnold Burns wrote to Leigh Ratiner, the lead counsel at Dickstein, Shapiro and Morin on INSLAW's litigation against DOJ. Mr. Burns' letter urged Mr. Ratiner to try to convince me to give up INSLAW's claim for license fees from DOJ in exchange for an early, and by implication, favorable settlement of the other contract disputes.

In late September 1986, E. Bob Wallach, then Of Counsel to Dickstein, Shapiro and Morin, and one of Attorney General Meese's closest friends, told Ratiner that INSLAW was in a fight for its corporate life; that DOJ would never settle with INSLAW, presumably on any basis acceptable to me; and that Mr. Jensen, by then a U.S. District Court Judge in San Francisco, was still involved behind the scenes in the INSLAW case even though he was no longer part of the Executive Branch of the Government.³⁵

On October 10, 1986, Dickstein, Shapiro and Morin's Senior Planning Committee met and decided to ask Leigh Ratiner to withdraw from the partnership to which he had belonged for 10 years.

According to sworn answers to interrogatories from INSLAW, both Attorney General Meese and Deputy Attorney General Burns discussed the INSLAW case with Mr. Leonard Garment in October 1986. Mr. Garment is a senior partner at Dickstein, Shapiro and Morin. He and E. Bob Wallach represented Mr. Meese during the investigation by Independent Counsel Jacob Stein in 1984. The law firm has repeatedly declined to disclose the contents of these communications to INSLAW.

In late October, prior to Mr. Ratiner's learning that he was to be asked to withdraw from the firm, Mr. Ratiner and Mr. Nannes, one of Mr. Ratiner's partners who was then working on the INSLAW case, asked me and my wife to join them for lunch. Mr. Nannes told us that Dickstein, Shapiro and Morin had information on the highest authority that DOJ would never settle with INSLAW. Mr. Nannes assured us that Deputy Attorney General Burns' August 28, 1986 letter was not intended to be conciliatory. Mr. Nannes then asked us whether we would agree to settle the case by conceding to DOJ the right to use the PROMIS software, and collecting from DOJ only on the other contract disputes. My wife,

Nancy, and I asked Mr. Nannes why he thought we would even consider such a resolution. Mr. Nannes excused himself before the lunch was over to return to his offices at Dickstein, Shapiro and Morin.

Mr. Ratiner telephoned me the next day to tell me that he had been fired and that he believed it was because he had made reference to Mr. Jensen's dislike of INSLAW and PROMIS in the body of the June 1986 complaint, and because he demonstrated that he could not or would not control his client. I believe that this meant that Mr. Ratiner would not attempt to force me to accept the settlement that Deputy Attorney General Burns had asked him to convince me to accept, and that Mr. Nannes had tried to persuade me and my wife to accept.

In December 1986, Mr. Nannes and an associate again approached me in an effort to persuade me to accept a settlement patterned after the one suggested in the August 1986 letter from Deputy Attorney General Burns.

In early 1987, Dickstein, Shapiro and Morin told me that our ability to prove INSLAW's entitlement to license fees from DOJ had suddenly deteriorated and that the law firm would seek leave of the Bankruptcy Court to withdraw from the case unless I consented to settle the case on terms recommended by the firm which were: no license fees from DOJ, but a settlement of no less than \$1 million from DOJ for the contract disputes. I declined to accept the settlement ultimatum from Dickstein, Shapiro and Morin and instead sought and obtained new litigation counsel.

It should be noted that the U.S. Bankruptcy Court Judge James Schneider ruled in December 1988 against INSLAW's contention that Dickstein, Shapiro and Morin had abandoned INSLAW without just cause and had, thereby, forfeited its entitlement to be paid legal fees. Judge Schneider ordered INSLAW to pay all of Dickstein, Shapiro and Morin's legal fees, billed during the period of their representation of INSLAW, and also to reimburse Dickstein, Shapiro and Morin for its costs in litigating its fees. INSLAW agreed not to appeal this decision as a condition for obtaining a waiver from Dickstein, Shapiro and Morin of the law firm's right to be paid in full for the approximately half a million dollars in legal fees before INSLAW could emerge from bankruptcy.³⁶

³⁵ Testimony of Leigh Ratiner, derivative proceeding of INSLAW, Inc. v. United States Department of Justice, Case No. 85-00070.

36 Oral Ruling, of U.S. Bankruptcy Court Judge James F. Schneider, derivative proceeding of INSLAW, Inc. v. United States Department of Justice, Case No. 85-00070, December 16, 1988. (Rendered in a telephone conference; written ruling has not yet been issued.)

- H. The Missing Link That Appears to Help Explain the DOJ Misconduct is the Uniform Office Automation and Case Management Project, Code Named Project Eagle, The Largest Procurement in DOJ History. Project Eagle was Designed to Lead to the Purchase of Hundreds of Millions of Dollars of New Computers Specially Equipped To Be Able To Run PROMIS

Three days before Deputy Attorney General Burns sent his August 28, 1986 letter to Mr. Ratiner, DOJ issued new requirements for a pending Request for Proposals (RFP) for the Uniform Office Automation and Case Management Project, code named Project Eagle. DOJ added the 94 U.S. Attorneys' Offices to the pending RFP, and mandated certain technical requirements for all computers to be purchased under Project Eagle.

1. DOJ Dissembled in Answers Published To All Project Eagle Bidders By Denying A Connection Between Newly Mandated Technical Requirements For The Project Eagle Computers, and the PROMIS Case Management Software.

The following month, on September 26, 1986, DOJ published to all of the Project Eagle bidders questions from bidders about the newly mandated requirements, and DOJ's answers. DOJ dissembled to the bidders by denying any connection between the new technical requirements and the PROMIS software, and by affirmatively stating that DOJ would not install the PROMIS software on the Project Eagle computers.

2. DOJ Subsequently Admitted That It Issued The Technical Requirements For The Express Purpose of Giving DOJ The Option of Installing The PROMIS Case Management Software on The Project Eagle Computers.

DOJ subsequently, however, admitted in pleadings filed in both the U.S. Bankruptcy Court and the U. S. District court in 1987 and 1988 that DOJ issued the August 1986 technical amendments for the express purpose of giving DOJ the option of installing the PROMIS software on the Project Eagle computers.³⁷

3. DOJ Made It Explicit That DOJ Would Install Case Management Software on Every Project Eagle Computer But Would Provide For the Software Outside of The Project Eagle Procurement.

The Project Eagle RFP makes it clear that DOJ will install case management software on every Project Eagle computer, but that DOJ will provide for the case management software outside of the Project Eagle procurement.

The initial contract award under Project Eagle is expected to be worth about \$211 million, according to testimony before the Senate Judiciary Committee in the spring of 1988 by John Keeney, then Acting Assistant Attorney General for the Criminal Division. The initial award will procure new computers, specially equipped to be able to run the PROMIS software, for the 94 U.S. Attorneys' Offices and the Criminal and Tax Divisions.

4. Project Eagle Could Lead to The Purchase of Hundreds of Million of Dollars of New Computers Specially Equipped to Run the PROMIS Software, For Virtually Every Legal Office of DOJ.

DOJ has options in the Project Eagle Procurement to expand the contract to encompass the other five legal divisions and the nationwide operations of DOJ's independent bureaus such as the Bureau of Prisons, the Immigration and Naturalization Service, and the U.S. Marshall's Service. If DOJ awards a contract under Project Eagle and exercises all of the options, the contract could easily be worth some multiple of \$211 million.

The way that Project Eagle is structured, the only way to achieve the uniform case management part of the Uniform Office Automation and Case Management Project would be to award a separate contract for case management software and services.

Deputy Attorney General Burns' letter to Mr. Ratiner on August 28, 1986 described my insistence on INSLAW's entitlement to license fees from DOJ's use of PROMIS as "the fly in the ointment" obstructing an early settlement of the other contract disputes.

If DOJ officials were then intending to award a "massive sweetheart contract" to their friends to install PROMIS as the uniform case management software for the Project Eagle computers, my insistence would also have been the "fly in the ointment" obstructing the largest procurement in DOJ history and, presumably, the largest, if not the only, procurement fraud in DOJ history.

37 July 27, 1987 response by DOJ to interrogatories in U.S. Bankruptcy Court. April 15, 1988 pleading filed by DOJ in U.S. District Court.

I. INSLAW Obtained New Litigation Counsel and Prosecuted and Won Two Trials During 1987 Against DOJ, Winning a Judgement Against DOJ for About \$8 Million in PROMIS License Fees and Legal Fees.

1. INSLAW Discovered the 1985 Covert DOJ Plan to Liquidate the Company During the Winter of 1987 When INSLAW was Without Litigation Counsel.

During the winter of 1987, while reading through documents obtained from DOJ in discovery, my wife, Nancy, found a handwritten note by Mr. Videnieks written in February 1985, the month that INSLAW filed for bankruptcy protection. The note said that Mr. Brewer had talked to Mr. Stanton and had been assured that INSLAW would be liquidated under Chapter 7 of the U.S. Bankruptcy Code rather than being permitted to reorganize under Chapter 11 of the Bankruptcy Code.

One of our senior software engineers, Greg McKain, had also kept his contemporaneous notes of a February 1985 telephone conversation with Mr. Jack Rugh, then an aide to Mr. Brewer, who had telephoned Mr. McKain to recruit him for an employment contract with DOJ as soon as INSLAW was liquidated. According to Mr. McKain's notes, Mr. Rugh had stated that the Executive Office for U.S. Attorneys had talked to the "U.S. Trustees" and had learned that INSLAW would be liquidated within 30-60 days.

When Mr. Pascuito then met Nancy and me for breakfast on March 17, 1987, and told us about the covert 1985 DOJ plan to dispatch Harry Jones to Washington to liquidate INSLAW, we decided that we needed to find new litigation counsel immediately. Dickstein, Shapiro and Morin had withdrawn from the INSLAW case, and we were having some difficulty finding new litigation counsel because of the obvious questions about our ability to afford such representation.

Brian O'Neill and Michael Lightfoot, two close friends of ours who are trial lawyers and who live in Los Angeles, agreed to come back to give us interim help.

While staying at our house for a week, Messrs. O'Neill and Lightfoot conducted depositions of current and former DOJ officials, including U.S. Bankruptcy Court Judge Cornelius Blackshear in his chambers in New York City. Judge Blackshear provided sworn deposition testimony entirely consistent with his earlier statements to the judge friend of our bankruptcy counsel, and with his statements to our counsel in the course of telephone conversations preceeding the deposition.

The day after Judge Blackshear gave his sworn deposition testimony, however, he prepared and signed an affidavit recanting material portions of his testimony.

Once this happened, we and our interim litigation counsel realized that we were, as E. Bob Wallach said to Leigh Ratiner, in a fight for our corporate life, and we would have to find new litigation counsel in Washington, D.C. to help see us through a longer-term ordeal.

2. McDermott, Will and Emery and Kellogg, Williams and Lyons Agreed to Serve As INSLAW's New Co-Counsel for the Litigation Against DOJ.

Charles R. Work, the Managing Partner of the Washington office of McDermott, Will and Emery, and the former prosecutor who pioneered with the Institute for Law and Social Research in the development of PROMIS during the 1970's, agreed to represent INSLAW in the litigation. Mr. Work helped INSLAW to recruit Phillip Kellogg and James Lyons, two highly experienced trial lawyers to serve as co-counsel. Michael Friedlander, one of Mr. Work's partners who is a highly experienced trial lawyer, served as lead counsel for the trial on the proprietary software.

3. INSLAW Used a Copy of the Very Software Stolen by DOJ to Retrieve Information From Thousands of Pages of Documents Quickly Enough to Depose About 45 DOJ Witnesses Within About 60 Days Time.

INSLAW adapted a copy of its PROMIS case tracking and workflow management software to track the names, subject matters, and dates associated with the thousands of pages of DOJ documents obtained under discovery. Using this specially tailored version of PROMIS, INSLAW produced subsets of the documents for use by the new litigation counsel in deposing DOJ officials. INSLAW conducted about 45 depositions of current and former DOJ officials within about 60 days.

4. INSLAW Retained Two Expert Witnesses for the Trials.

During the trial on INSLAW's ownership of the proprietary version of PROMIS and its entitlement to be paid license fees for DOJ's theft of 44 copies of this proprietary version, INSLAW employed as an expert witness Dr. Thomas DeLutis. Dr. DeLutis immersed himself in the structure and uses of the PROMIS software; analyzed each of the major privately-financed "hook on" enhancements to PROMIS; developed a methodology for explaining the aggregate uses of the smaller discrete enhancements "sewn into" the PROMIS code; and traced the process of making changes to the

PROMIS software from the requests for changes, the assignment of software engineers, and the reporting of staff time, to the insertion of changes into the code and recordation in the source code of the date and purpose of the change, and the identity of the software engineer who made the change.

During a subsequent trial on damages, Mr. Bernard Goldstein, a partner at Broadview Associates, the leading financial intermediary for the computer software and services industry, testified about INSLAW's competition, and about its pricing for both fixed duration and perpetual licenses in comparison with practices of similarly situated software product companies.

J. The Relevance of the INSLAW Case to the Current Administration's Attempt to Focus Attention on the Question of Ethics in Government.

1. Attorney General Meese's Effort to Block Testimony by DOJ Officials Before the Senate Permanent Investigations Subcommittee on the INSLAW Case.

On his second to last day as Attorney General, Mr. Meese forbade Mr. Stanton to honor a subpoena from the Senate Permanent Investigations Subcommittee for deposition testimony that day in regard to DOJ's handling of the INSLAW matter.

Senator Sam Nunn, Chairman of the Subcommittee, held a public hearing that afternoon to consider the Subcommittee's response to Mr. Meese. During the public hearing, Senator Warren Rudman expressed surprise that DOJ witnesses had not sought to be represented by private counsel, instead of by DOJ attorneys. Senator Rudman warned the DOJ witnesses that criminal cases could flow against some DOJ officials from Judge Bason's Findings of Fact.

Although Attorney General Thornburgh subsequently rescinded Mr. Meese's order forbidding DOJ officials to cooperate with the investigation by the Senate Permanent Investigations Subcommittee, there is as yet no discernible evidence that DOJ is interested in having a credible, serious and independent investigation into the misconduct against INSLAW by its officials.

2. The Criminal Division Clearance of Attorney General Meese of Wrongdoing in the INSLAW Case was a Surprise to the Criminal Division Prosecutor Conducting the Investigation of Alleged DOJ Malfeasance in the INSLAW Case.

In May 1988, while Attorney General Meese was still in office, DOJ issued a press release on the afternoon of the first of two highly critical CBS Evening News telecasts on the INSLAW case. That press release absolved Mr. Meese of any wrongdoing in the INSLAW matter.

On the following business day, an aide to Senator Christopher Dodd contacted the career prosecutor in the Criminal Division who was responsible for the Criminal Division's investigation of INSLAW's allegations about DOJ malfeasance against INSLAW. According to Senator Dodd's aide, the career prosecutor denied any knowledge of any investigation clearing Mr. Meese, or of any press release to that effect. Shortly thereafter, the prosecutor, who had by then reportedly served in the Criminal Division's Public

Integrity Section for about seven years, resigned from DOJ to teach law in Louisville, Kentucky.

3. DOJ's Internal Ethics Watchdog Agency, The Office of Professional Responsibility, Exonerated DOJ Officials of Wrongdoing in the INSLAW Case by Issuing an Internal DOJ Investigation Report that Seriously Misrepresented the Trial Record.

On December 18, 1987, ten days before the Chief Judge of the U.S. Court of Appeals informed Judge Bason that he would not be reappointed as the sole U.S. Bankruptcy Court Judge for the District of Columbia, DOJ's Office of Professional Responsibility published an internal DOJ report that attempted to exonerate Mr. Stanton and justify the firing of Mr. Pascuito. The internal DOJ memorandum, addressed to the Deputy Attorney General of the United States, was harshly critical of Judge Bason, characterizing his remarks as "unsubstantiated and unfair" and "injudicious," accusing Judge Bason of "unjust pilloring" of Mr. Stanton, and opining that there was "no evidence" to support Judge Bason's rulings about Mr. Stanton.

The OPR report simply ignored the following evidence in the record of the trial:

- o Messrs. Videnieks and McKain's contemporaneous written notes, from February 1985 about the fact that Mr. Stanton and the U.S. Trustees had given assurances to DOJ of an early liquidation of INSLAW;
- o Undated handwritten notes of U.S. Trustee White about the "friendship" between DOJ and the U.S. Trustees and the "conflict of interest" inherent in any effort to liquidate INSLAW;
- o The uncontradicted sworn testimony of Judge Blackshear, Thomas Stanton, and William White that Mr. Stanton sought to detail Harry Jones, the First Assistant U.S. Trustee in the Southern District of New York, to Washington full-time to work on the INSLAW bankruptcy case;
- o The unrebutted sworn testimony of Judge Blackshear, and Mr. White that they secretly collaborated on drafting additional language to propose to Judge Bason for inclusion in a pending Confidentiality Order on INSLAW in order to prevent Mr. Jones from gaining access to the INSLAW data through DOJ; and,

- o Judge Blackshear's original sworn deposition testimony that Mr. Jones' intended mission in Washington was to effectuate INSLAW's liquidation.

DOJ continues to profess that its officials did nothing wrong in relationship to INSLAW.

One of the reasons for President Bush's efforts to rebuild public confidence in the ethical conduct of the government's business is the unfolding scandal in the Pentagon of an alleged widespread procurement fraud. DOJ, of course, is responsible for the investigation and prosecution of this fraud.

- 4. DOJ Expects the American Public to Believe that It is Serious About Cleaning Up the Alleged Procurement Fraud at the Pentagon at the Same Time that DOJ Refuses to Seek a Serious, Credible, and Independent Investigation of What Appears to Have Been a Massive Procurement Fraud Within DOJ Itself.

The American public might reasonably question how serious DOJ is about clearing up the alleged procurement fraud in the Pentagon, in light of its steadfast refusal to seek a serious, credible, independent investigation of what at least appears to be a massive procurement fraud within DOJ itself.

DOJ is the primary guardian of ethics in government. DOJ's behavior in the INSLAW case gives meaning to the age old question: "Who will guard the guardians?"

BD/IW/SP-02

TRANSCRIPT OF REMARKS BY
THE HONORABLE EDWIN A. MEESE, III,
TO THE PROMIS USERS GROUP MEETING,

SHOREHAM HOTEL,

APRIL 22, 1981

Prepared by
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THE HONORABLE EDWIN A. MEESE, III,
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(Applause)

Thank you very much, Bill Hamilton, distinguished guests, ladies and gentlemen. It's a real privilege for me to be here. I actually feel more at home in this gathering, I think, than I ordinarily would be addressing the kinds of people I normally meet with these days. It's a little bit of a change for me not to be involved in state and local law enforcement, as you are. As a matter of fact, I still have to remind myself not to say, "Let's not make a federal case out of this," when we're talking about things around the White House. But ... we'll talk, I think as Bill and I talked, that I'll speak informally with you for a few minutes and then I'd be very happy to answer questions and perhaps perform the most useful service in responding to what happens to be on your minds right now. But I would like to make a few opening remarks and talk a little bit about what we hope is the relationship between the federal government and state and local governments in the field of law enforcement and criminal justice and what will be a developing partnership over the next several years.

As you come together here in this conference, and I must say I think it's an excellent idea, we're not much on people traveling in this administration, but I think the travel you've engaged in to come here for the topics you're discussing are well worth the investment. I think what the PROMIS program has done, what INSLAW has done, and I knew them as one of the recipients of their literature over the past several years at

the University of San Diego where, as you heard, I was involved with the Criminal Justice Center. I think that some real strides have been made in not only collecting data about the criminal justice system but putting it into usable form. One of my great peeves when I was with Governor Reagan in California was that we had statisticians in the Department of Corrections and in the Department of Justice that compiled reams of material but very little of it was either in forms that could be used or was actually being used for management decision making. I'll talk a little more about that later.

(The Problem of Increased Crime)

But as you come together here there is no question that crime has arisen again as one of the major problems that face the people of this country. As a matter of fact, if you have read U.S. News and World Report this week, it comments on the tremendous public interest and concern about the crime problem. When I say that it has risen again, crime has never been far from the top three or four concerns of the public over the past 10 or 15 years. And it's only been occasionally that it's been eclipsed by foreign affairs, or by inflation, or the state of the economy, or unemployment, that temporarily it becomes third, fourth, and fifth, and then it seems to rise again as it is at the present time. Which is not unusual, because you know far better than I that over the last 10 years violent crime has increased 59 percent in this country; and, of course, the statistics for 1980 show an increase of 10 percent overall for Part 1 crimes and 13 percent for violent crimes.

This is a matter of great concern, people no longer feeling safe in their own homes, no longer feeling safe in their own cities; as a matter of fact, those of us who live in Washington wake up in the morning to a long list of the shootings that have occurred the previous night, which is a daily feature of our radio news programs in the morning. And so it's necessarily a matter that concerns the Reagan administration, along with all of you here. We feel that we brought to Washington a team that will be interested in working on this problem and who represent a point of view that is very similar to your own. We have, for example, as you undoubtedly have heard, the colleague of Ed [Edwin Miller, District Attorney, San Diego County] and John [John Van de Kamp, District Attorney, Los Angeles County], Lowell Jensen, who was District Attorney, Alameda County, California, and is now the Assistant Attorney General in charge of the criminal division. We've brought others who similarly have that point of view. Jeff Giuffrida, who originally was in charge of the Military Police Schools, Civil Emergency Management School at Fort Gordon and later was the head of CSTI, the California Specialized Training Institute, specializing in various forms of law enforcement training, has now been named to head the Federal Emergency Management Agency. Herb Ellingwood, who is known to many of you, I think, from his activities in both California and as a part of the criminal law section of the American Bar Association, is the Deputy Counsel for the President and will be particularly concerned with matters pertaining to law

enforcement and criminal justice in the White House, working with others throughout the government in this regard.

(The Relationship Between the Federal Government and State and Local Governments)

We feel it is critical that we establish a good relationship on the part of the federal government working with state and local law enforcement organizations, so that there can be a spirit of coordination and cooperation between the various levels of government. And this is not just a saying--the slogans that have been heard from every administration--we feel that it must go deeper than that, that it must be a regular practicing part of the activities of the federal government so that when we do things here that have an impact upon you, they will not come as a surprise and that we have planned with you so that you can work it out in the best way. I'm thinking, for example, of changes in federal policies, of federal agencies, for example, changing what types of criminal investigations they will participate in or not participate in. Of new policies relating to things like drug control, of new laws of the federal government that impact local law enforcement and state law enforcement. These are the kinds of things where we need to maintain a dialogue with you. And where we need your input and your suggestions, and your ideas, so that not only will there be no surprises, but that the vast amount of knowledge and expertise that is contained primarily at the local and state level can be a source of information and source on that level so that we don't have either duplication of

of knowledge for the planning that is done on the federal level. An example of this is occurring right now, as Bill Smith, the Attorney General (William French Smith), is looking into the matter of violent crime. Not from the idea that this is essentially a federal problem, but rather that it is a pressing problem for the people of this country and therefore it is critical that the federal government talk with you and get your ideas to know what the federal government should be doing in terms of supporting and assisting local government, which has the primary responsibility for dealing with violent crime. And there are a number of ways, as he's finding out; the first hearings were conducted last week, and there will be additional hearings around the country in the course of the next two months; 60 days has been the deadline set for this task force to present its first report on what the federal government should be doing in this particular area. I think this is the first step that we are taking, but there will be others. Because I think it is critical that, as we develop the relationship between the federal and state and local governments, that we carve out and clearly define what is the federal role in law enforcement and criminal justice.

Sporadically over the past two decades, the federal government has done different things. They have embarked on new ventures, they have gotten into criminal justice fields, then they have withdrawn from some of them, and then started others. I think that it is important that we clearly define what the federal role should be--what it is that should be done on that level so that we don't have either duplication of

effort that is not productive or conflict and interference between the various levels of government, or that because of particular federal interest in one area that we are leaving some other area that is particularly a subject for federal action totally untouched. And I'll mention some of these as we go along.

(Preventing the Importation of Narcotics and Other Dangerous Drugs)

One of our preliminary hypotheses, at least, and perhaps one of the preliminary policies that is now emerging, is that a primary responsibility of the federal government is the prevention of the importation of narcotics and other dangerous drugs into this country, and that this is a function only the federal government can really handle, and it has an absolute responsibility to do so. And has a responsibility to do so in a different way, in a more massive way, in a more extensive way than has ever been done before. This involves mobilizing the full resources of the federal government to do it. It starts, of course, with the agencies that are particularly dedicated to this task. The Drug Enforcement Administration, Customs, and others that are working primarily on the borders of our country. But it means to define their role also, and that the role should be addressed towards the prevention of the importation of narcotics rather than in some cases, as has happened in the past, a duplication of the efforts of local law enforcement people. It involves supporting and assisting local

enforcement in those aspects of the drug traffic which are beyond their ability to control, such as the interstate shipment of narcotics and drugs, interstate activities, the relationship to organized crime, and so on. But we have to go beyond that and get into areas where we haven't done a very good job at the federal level before. Such as getting the State Department involved. It was kind of a travesty that in the past we have had people in the position of Assistant Secretary of State for International Narcotic Affairs who themselves belonged to organizations that were dedicated to the legalization of marijuana. It doesn't seem to me that that's the right attitude for controlling the importation of marijuana along with other narcotics and dangerous drugs. We have to look at new resources, such as providing substitute crops for the principal cash crop of Jamaica, which happens to be marijuana as many of you know, and this involves in a sense the Department of Agriculture, as well as the State Department, in doing things that could make some basic changes. Our foreign policy should have a component which involves working with other countries, where the source of opium and marijuana and other narcotics and dangerous drugs are initially produced, so that it does not become a part of the national interest of those countries to import narcotics into this country. Those are the kinds of things where I say we have to make a massive and coordinated and more extensive effort, so that we look at every agency of the federal government and say what can this particular Department or agency do to contribute to a

nationwide fight against the importation of narcotics into this country. That's the kind of thing, and we have to assign that the proper priority. If that is going to be the number one priority then that ought to be known throughout all of the Departments so that we can have that kind of coordinated attack, coordinated effort.

(The Role of the FBI)

The Department of Justice has already indicated its priority in regard to organized crime and white collar crime and that a good deal of its resources will also be placed there.

Particularly the resources of the FBI, the resources of the U.S. Attorneys, and the other legal aspects of the Department of Justice. And there again, clearcut priorities and clearcut planning needs to be set out and is being set out by the Attorney General and his assistants as they look towards what they can do in the crime area. We have to continue to maintain, and, where necessary, expand the support and training that the federal government has traditionally provided, particularly the resources of the FBI, which has been a valuable source of training and valuable source of support. In this regard the Federal Bureau will be dedicating in June the new facility at Quantico, which is the forensic sciences section of their vast training complex there, which will provide the ability to train local law enforcement people in the forensic sciences so that they will do a better job not only in analyzing laboratory materials and so on, but a better job of testifying in court.

Again, it's not supplanting local law enforcement, it's supporting and assisting.

(Selection of Federal Judges)

Finally, there is an area that the President feels particularly strongly about and that is the selection of federal judges. We have had the unfortunate situation too many times in the past of federal judges who thought that they knew how to run local law enforcement systems, local prisons, local jails, local courts better than the people who were elected or appointed to do them in the individual communities. I think we have to look very carefully at the extent to which the federal presence has not been one of support and assistance, but has been the imposition of virtual federal tyranny through the federal courts, and in some cases through the Department of Justice, upon local criminal justice agencies. Now, it's true we have gone through a period of time in which there was a lot of new federal legislation that has then been enforced, perhaps overly zealously by the Department of Justice, through the federal court systems. I think we need to take a rational look to see what should be the federal role. None of us is interested in inhumane conditions in prisons, none of us is interested in improper treatment of the civil rights of anyone, including those people who happen to be incarcerated. But at the same time there is no need to carry this to such a ridiculous extreme that we have federal judges who are laying down conditions arbitrarily for the management of state and

local jails and prisons which defy common sense or any reasonable person's judgment.

(LEAA)

Let me talk a minute about LEAA. I know that is a subject that is dear to the heart of most of you here because you undoubtedly were at least initially funded by that organization as your programs got started and particularly the program that is sponsoring this conference. As you know, in the last administration, LEAA was zeroed out as far as funding is concerned. We have not made specific decisions yet as to how this administration will respond to the federal funding of criminal justice at the state and local level. I must say the climate for any additional funding for any program right now is not particularly good, as I am sure you have heard. But I think there is a desire on the part of this administration to accept its responsibilities and that's why we will be looking very carefully at this particular subject. I think we have a lot to learn from the experience of LEAA. As it was started in 1968, replacing the old Office of Law Enforcement Assistance, and as the Omnibus Crime Control and Safe Streets Act was implemented, I happen to have at that time, along with some of the people I see here, been involved in some of the early work that was done in regard to setting up state planning agencies and developing the activity. And if you remember, unfortunately, LEAA suffered what has too often been a pattern of the federal government. It started out with a whole new concept of block grants. In the first few years there were, in

et, block grants with a relatively low level of federal interference on how that money was to be used. But, as I have often said, one day they opened up that building on 6th & Indiana and like a vacuum it absorbed all of the bureaucrats from various other Washington agencies and pretty soon, year by year, more restrictions were placed on the money, more categorization was made as to the grants, more separate little pockets of money had to be appropriated in each state for particular purposes. First it was the courts because they wanted their share, then it was corrections, then it was this group, and then it was that group, and by the time they were through in the last full year of LEAA activity, you had practically another series of categorical programs as opposed to the block grant concept. That was the down side. I think we have to recognize, however, that there was an up side. LEAA did a lot of good, and we must not forget that as we look ahead to planning what ought to happen in the future. One of the things it did very well was to provide money for programs such as this, for the career criminal program, for the increased arrest of major offenders program; it provided a great deal of hardware, equipment, and materials for police departments and district attorneys' offices. It provided for computerization which was very badly needed; it provided for information systems, such as are represented in your deliberations today; it provided for the individual radios the police officers use, which is probably the greatest advance in police work since the original invention of the two-way radio. These are the good things that happened. Where a lot of money was wasted, in my

opinion at least, was in the fact that it motivated a lot of social programs, so-called crime prevention and treatment programs that could never have made it on their own in the competition for local funds, but now because there was this new source of funding at the federal level, spurious and questionable programs received a great deal of this money and a lot of social workers suddenly found themselves employed. The other thing that happened at this time, and I think that we have to be careful about in the future, was the fact that a lot of management consulting firms that were looking for new business suddenly added a law enforcement component, put a few consultants and accountants into it, and suddenly became law enforcement consultants instead of business management consultants. And again, some of them did good work, others did far less than good work and drained off a lot of those funds. As a result, over the years the combination of these things, the combination of spurious organizations getting the money and the fact that there was an increased categorization of the grants, combined with the fact that when LEAA finally died a year or so ago, you really didn't hear too many protests because all of the people who were concerned were kind of fed up with the direction in which it was going. Now I say this because I think it's valuable to keep that in mind as we look to see what the federal role should be in the future and not repeat the lessons of the past.

es of Management Information)

As far as the future is concerned, I think what you are doing here and what the PROMIS program and what INSLAW has done provides one of the greatest opportunities for success in the future, because it has to do with good planning and good use of management information. One of the things that is coming out of your programs right now is not just the data for the day-to-day operation of the criminal justice system but some very valuable data as to the system itself, which ought to be used for management planning, which ought to be used for budgeting, and which ought to be used to figure out how we can do a better job of incarcerating, prosecuting, and convicting criminals, and thereby protecting and doing a better job of protecting the public.

You know, people wonder why there is so much crime. I would suggest to you that it's a matter of simple mathematics. You know the statistics better than I, but just take this as a start. We recognize that 25 percent of Part I crimes is all that ultimately results in the apprehension of the criminal. You take that 25 percent and you recognize that only about half of those that are arrested for felonies are ever ultimately convicted of a felony. So you are down to about 12 1/2 percent. Then, if you figure about 1/5 or less of those people actually go to prison, mathematically a criminal who commits an average burglary, at least, and in some cases robberies, stands 1 chance in 40 of going to prison. Now those are pretty good

you can't get those at the local race track. And so it
hands to reason that we have got to do a better job, but the
only way we are going to do a better job is not necessarily
throw more money after it, or throw more people after it,
although in many cases that is necessary. But it is also
necessary to think smarter, to do better in terms of planning
and utilizing the management information in the ways you have
been discussing at the conference and in the ways that the
materials that have been produced by INSLAW indicate the most
successful means of protecting the citizens and apprehending
and convicting criminals lead us in the future. But, also I
think we have reached a point with the kind of criminal
statistics we have today that we have to really look at some
common-sense solutions and perhaps look deeply into things that
have occurred over the course of the past quarter century and
see if we are really on the right track as a society. I think
we have to look at some basic tenets of the criminal law. I
would suggest that we ought to seriously look at the insanity
defense, and the way in which evidence is being presented of
mental condition, and see if that is really the way we want to
go. I would suggest, for example, that if we did away with the
insanity defense and if we presented to the jury the simple
question of did this person or did this person not commit the
crime, and if we limited the testimony of psychiatrists to the
mental condition of the individual, as far as the specific
defenses with a particular category of crime, the mental
element that is necessary in many crimes, that we would go a

...way toward taking the person and convicting him of the
...and letting his mental state be a factor in the ultimate
treatment after conviction and then we would do a lot better as
far as ridding the streets of some of the most dangerous people
that are out there, that are committing a disproportionate
number of crimes.

Secondly, I would suggest that we really have to look at
the exclusionary rule. By coincidence, it's been just about
exactly 20 years since the infamous Mapp case imposed the
exclusionary rule on state and local governments. I think we
have to look at what has happened in those 20 years. I would
suggest to you that even the basic reasoning that gave rise to
the exclusionary rule first in the Cahan case in 1955 in
California, which was pretty well adopted by the U.S. Supreme
Court in 1961, that the original reason for excluding evidence,
and that was unreasonable conduct by police officers, has now
given rise to a complexity of legalisms, technicalities, and
loopholes that have totally undone the reason for the rule
initially even if you believed in the exclusionary rule at one
time. It is time to overhaul that whole system and see if we
can't find a better way of handling the proper way of obtaining
evidence than now, as what happens too often is that cases
aren't even taken to the district attorney or if they are taken
to the district attorney a complaint is never filed because of
this porass and maze of legalisms.

Thirdly, I think we have to look seriously at bail. I was
impressed by statistics that came out of your studies here that

the number of criminals, particularly drug-related criminals, that commit additional crimes while on bail. And everybody says that that would violate the presumption of innocence. Well you district attorneys know that the presumption of innocence is a rule of evidence in a trial and that prior to trial the constitution only says that bail shall not be unreasonable. I think we have to redefine what is unreasonable bail and under what conditions bail is reasonable.

Fourth, I think we have to look at sentencing. I get concerned when I hear everybody saying, well here is a misdemeanor assault on a police officer, let's make it a felony. Or here is a felony, let's take a penalty and make it 25, or 30, or 40 years. This is ridiculous. Maybe we are making the public feel better but we are really kidding them. How many times do you see the maximum sentence for any crime used now by a judge when he passes out the sentence? I think that realistic sentencing within the present guidelines is more appropriate than trying to fool the people by going to the legislature and expanding the sentences. Let's use what we have on the books now more effectively.

And related to that is the fifth point. Until and unless we do something about the prison system in this country and expand the capacity to incarcerate dangerous criminals and keep them there for a while, we are not going to really be addressing the crime problem. In virtually every state now we have a compounded problem where the criminal justice system is squeezed by the federal courts, on one hand, telling them how

people you can have in a cell and by the people's lack of interest in voting for prison funds or having a prison in their community on the other end. One governor that met with us yesterday said that he is literally under a court order that for every new prisoner committed to the state prison system they have got to push one out on the other end. And that is a very poor way to have realistic sentencing for realistic corrections administration. And somehow, and maybe this might be a way of the federal government getting involved, if we are going to fund anything, maybe we ought to get back into the funding of new prisons as a way to alleviate one of the most pressing needs of the criminal justice system.

Well, these are a few ideas that come to mind as we address this problem. I suspect that most of you or many of you at least have thought of some of them or all of them yourself. But I just want to demonstrate to you that you do have an administration in Washington now that is concerned about these things, that has people here, some of those that I have mentioned in the Justice Department and elsewhere, who are concerned about your needs and how we can best work with you for a better criminal justice system throughout this nation. You can be sure that when there are problems, when the federal government is doing things to you that we may not know about, when there are difficulties, or when there are ways we can assist you or do a better job at maintaining our share in the partnership between federal, state, and local governments in the fields of criminal justice and law enforcement, we want to

about it, we want to work with you, and maybe together in
the next four years we can make some real inroads on stopping
the continual rise of crime in the United States. Thank you.

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